ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ILLINOIS.[2]
SUPREME JUDICIAL COURT OF MAINE.[3]
COURT OF ERRORS AND APPEALS OF MARYLAND.[4]
SUPREME COURT OF MISSOURI.[5]

ACTION.

Employee—Premature Discharge of—Damages.—The plaintiff contracted with the defendants to play first old man and character business for thirty-six weeks. At the close of the nineteenth week, the defendants discharged the plaintiff without fault on his part, who commenced an action for breach of the contract during the next week. *Held*, that the action was not premature; *held*, also, that the plaintiff was entitled to recover as damages for the remainder of the term at the stipulated rate, less what he actually earned or might have earned by the exercise of reasonable diligence, with interest; that having obtained another contract within the line of his profession within the time of his original contract with the defendants, the sum which he might have earned thereby to the time when his contract with the defendants expired, should be deducted from the contract price with the defendants: *Sutherland* v. *Wyer*, 67 Me.

ASSUMPSIT.

Implied Contract—Intention of Parties.—In order to raise an implied contract to pay for labor, it is not necessary that there shall have been an intention on the part of the laborer during his service to charge therefor; it is sufficient that the one for whom the labor is done expected to pay for it. So, unless the work was done under circumstances justifying the belief that no charge was intended, a liability arises, even though no charge was in fact intended by the laborer during his service: *Hay, Adm'r of Crawford*, v. *Walker et al.*, 65 Mo.

In an action to recover the value of services rendered to a firm the defence relied on was an alleged understanding between the parties that plaintiff was to charge nothing for his services. The court having instructed the jury, that, as there was no express contract, defendants were not liable if the services were rendered under circumstances justifying their belief that no charge was intended, *held*, no error to refuse instructions to the effect that plaintiff could not recover, if at the time the services were rendered they were understood by all the parties to be gratuitous, or if plaintiff did not then intend to charge for them. The instructions given are equivalent to those refused: *Id.*

ATTORNEY.

Authority—Revocation of—Payment to.—The authority of an attorney

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1877. The cases will probably be reported in 5 or 6 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 84 Illinois Reports.

[3] From J. D. Pulsifer, Esq., Reporter; to appear in 67 Maine Reports.

[4] From J. Shaaf Stockett, Esq., Reporter; to appear in 46 Maryland Reports.

[5] From T. K. Skinker, Esq., Reporter; to appear in 65 Missouri Reports.

who has obtained a judgment for his client, continues in force until the judgment is satisfied: *White* v. *Johnson*, 67 Me.

Payment to the attorney is payment to his client, and will protect the officer against a suit by the latter for not enforcing the execution: *Id.*

Returning an execution to the creditor's attorney of record, at the latter's request, will protect the officer against a suit by the creditor for not returning it into the clerk's office: *Id.*

Though the attorney abuse his trust and be answerable to his client in damages, such conduct is not to prejudice the officer, who is entitled to regard him as the agent of his client in all the contingencies which may arise in the prosecution of the suit, and all the processes adopted to secure or collect the debt intrusted to his care: *Id.*

To constitute a revocation of the attorney's authority, notice must be given. The opposite party, and all others interested, have a right to presume that his authority continues, until notified to the contrary: *Id.*

Bills and Notes. See *Partnership.*

Bill of Exchange—Presentment necessary to hold the Drawer.—On a suit by the endorsee or holder of an inland bill of exchange or draft against the drawer, who is also the endorser, no recovery can be had without proof of presentment to the drawee, or of facts constituting an excuse for not presenting the same: *Thayer* v. *Peck*, 84 Ill.

Bond.

Reformation of—Equity.—To justify the reformation of a bond which has been assigned to a bona fide holder, for a valuable consideration, not only must the alleged error be proved, but it must also be proved that the assignee had notice of the error at the time of the assignment: *Foster* v. *Kingsley*, 67 Me.

Thus, where a bond was erroneously written so that the maker by its terms obliged himself to give a good title to an unencumbered estate, when the understanding of the parties was that he should give a good title of his interest only as mortgagor; *held*, that while the bond might be reformed as between the original parties, yet after its assignment to a third party without notice, a court of equity would not interfere to reform it; *held*, also, that notice of the existence of a mortgage upon land is not notice that a bond by the owner of the equity of redemption, to convey the land by deed of warranty, is of necessity erroneously written: *Id.*

Boundary.

Metes and bounds in the description of premises control distances and quantities when there is any inconsistency between them. This is a familiar rule and is founded upon the principle that those particulars are to be regarded in which error is least likely to occur: *Morrow* v. *Whitney et al.*, S. C. U. S., Oct. Term 1877.

Broker.

Lien—Principal and Agent—Right of Broker to retain out of the Proceeds of a Cargo sold by him for an Agent, Brokerage due him by the Agent for the sale of other Cargoes not belonging to the same Principal.—Brokers do not usually possess the right of general lien, though, like other agents they may be in a situation to exercise the right of particular lien: *Barry* v. *Boninger*, 46 Md.

A cargo of sugar was imported by S., A. & Co. under letters of credit

from the plaintiffs dated July 27th 1875, and arrived in Baltimore under bills of lading in the name of the plaintiffs, in accordance with the agreement between the plaintiffs and S., A. & Co, as contained in the letter of credit. Upon the arrival of the vessel, S., A. & Co. gave a receipt to the plaintiffs for the sugar specified in the bill of lading, in which it was stated that they agreed to hold the sugar on storage as the property of the plaintiffs, with liberty to sell the same and account to them for the proceeds, until the amount of drafts drawn on S. & B. of London, in pursuance of the letter of credit, and accepted by them against the cargo of sugar, should be satisfactorily provided for. The cargo was sold to McK., N. & Co. of Philadelphia, through the defendants as brokers, but before it was all delivered S., A. & Co. failed on the 26th of August. The defendants were then on the 27th of August, authorized to deliver the balance of the cargo and to draw for the proceeds. Upon the receipt of the money from the purchasers, the defendants retained out of it the amount due them by S., A. & Co. for brokerage in selling other cargoes imported by them and not belonging to the plaintiffs. In an action brought by the plaintiffs against the defendants to recover the amount so retained, it was *held*, 1. That the property in the sugar was in the plaintiffs under the letter of credit and S., A. & Co's. trust receipt; 2. That the property in the sugar so being in the plaintiffs the defendants had no lien upon it for, and could not retain out of it, the amount due by S., A. & Co., for brokerage effected for them; 3. That the only claim the defendants could legally assert against the cargo of sugar or its proceeds, was for the amount of brokerage due them for effecting a sale of that particular cargo: *Id.*

COMMON CARRIER. See *Railroad.*

Negligence—Measure of Damages.—The plaintiff's intestate delivered to the defendants' agent at Castine $24.90 to be forwarded to Belfast and there delivered to one Beale, agent of the Continental Life Insurance Company. The money was sent for the purpose of paying the intestate's semi-annual premium on his life-policy, which would by its terms lapse if premium was not paid on or before eight days thereafter; of all which the defendants' agent had notice, but failed to deliver the money. *Held*, that primarily the defendants would be liable in damages for the net value of the policy on the day it lapsed, both parties having presumably contemplated such damages from knowledge of the circumstances. Also, *held*, that it was incumbent upon the plaintiff's intestate to use ordinary care and take all reasonable measures within his knowledge and power to reinstate himself with the insurance company or to reinsure, and that he cannot recover damage for such loss as he might have thus prevented: *Grindle* v. *Eastern Express Co.*, 67 Me.

CONSTITUTIONAL LAW. See *Corporation.*

Contract—Remedy for Enforcement—Power of Legislature to alter—Mandamus.—In modes of proceeding and of forms to enforce a contract, the legislature has the control and may enlarge limit or alter them; provided that it does not deny a remedy or so embarrass it with conditions and restrictions as seriously to impair the value of the right: *State of Tennessee ex rel. Bloomstein* v. *Sneed*, S. C. U. S., Oct. Term 1877.

The Bank of Tennessee was chartered in the year 1838, and its charter contained as its twelfth section the following provision: § 12. "Be it

enacted, that the bills or notes of the said corporation originally made payable, or which shall have become payable, on demand, in gold or silver coin, shall be receivable at the treasury, and by all tax collectors and other public officers, in all payment for taxes or other moneys due to the state." On the refusal of a collector to receive the same the remedy was by writ of mandamus: *Id.*

A subsequent statute provided that the party tendering the tax might pay his claim to the collector under protest, giving notice thereof to the comptroller of the treasury, and that within thirty days thereafter he might sue the officer making the collection. *Held*, that the legislature had the right to make this change of remedy and that the obligation of the contract was not impaired: *Id.*

CONTRACT. See *Constitutional Law; United States.*

CORPORATION.

Forfeiture of Charter—How the authority to institute such proceedings may be conferred—Constitutional Law.—While it is clear that proceedings by scire facias, or otherwise, against a corporation for the forfeiture of its charter, cannot be maintained, except by the sanction and authority of the legislature, a special Act of Assembly for this purpose is not required: *State* v. *Consolidation Coal Co.*, 46 Md.

It is competent for the legislature, instead of passing a special Act authorizing such proceedings to be instituted in a particular case, by a general law to authorize suits for this purpose to be instituted at the instance of private parties, as was done by the Act of 1818, ch. 177, sec. 4, codified in Art. 12 of the Code; or to confer the power upon the governor to cause the proceeding to be instituted in his discretion, whenever he may consider the public interests so require; and this power has been conferred by sec. 176 of the Act of 1868, ch. 471: *Id.*

Constitutional Law—Right to alter, repeal or annul Charters—Equity—Injunction to restrain the charge of excessive Tolls.—Where in the original charter of a railroad company the legislature expressly reserved the power to alter, repeal or annul the charter at pleasure, the question whether a proposed amendment of the charter is wise or consistent with the public interests and with the prosperity of the company, is one which by the charter is made to depend upon the wisdom and discretion of the legislature, and is not a question to be determined by the courts: *American Coal Co.* v. *Consolidation Coal Co. and Cumberland and Pennsylvania Railroad Co.*, 46 Md.

This construction of the terms of the charter is part of the contract, and all parties dealing with the company, acquire and hold their rights, subject to the reserved power of the legislature, to alter, repeal or annul the charter at its pleasure: *Id.*

And the court cannot presume that the power will be exercised by the legislature arbitrarily or unjustly: *Id.*

In the original charter of the Cumberland and Pennsylvania Railroad Company, the legislature expressly reserved the power to alter, repeal or annul the charter at pleasure. By the Act of 1876, ch. 64, modified by the Act of 1876, ch. 80, the rates of toll authorized to be charged by said company were reduced. *Held*, that the Act of 1876, ch. 64, was a constitutional and valid law, and that the railroad company could not lawfully exact or receive higher rates for transportation than that act

provides. And that the Act of 1876, ch. 80, was also free from constitutional objections: *Id.*

On a bill filed by the American Coal Company against said railroad company, for an injunction, prohibiting the latter from demanding or receiving from the complainant higher rates for transporting coal over the road of the defendant than were fixed and prescribed by the said Act of 1876, ch. 64, it appeared that the complainant, which was a coal mining company, with its tram-road connecting with the railroad of the defendant, and depending entirely upon the latter for the means of transporting its coal to market, was specially damaged by the illegal exactions by the defendant of excessive freights. *Held*, that the complainant was entitled to an injunction as prayed: *Id.*

COVENANT.

Of Seisin—Practice—Burden of Proof—Paramount Title.—Where in an action on a covenant of seisin the defendant admits the covenant and alleges seisin in himself at the date of the deed, it devolves upon him to prove the seisin, and if he fails, the plaintiff will recover: *Cockrell* v. *Proctor et al.*, 65 Mo.

The existence of a paramount title, whether asserted or not, is a breach of the covenant of seisin, whether it be express, or be implied by the words, "grant, bargain and sell." *Id.*

If a grantee fails to take possession of unoccupied premises conveyed by his deed, or having taken possession abandons them, he can recover of his grantor nominal damages only for breach of his covenant of seisin, unless there was a hostile assertion of a paramount title: *Id.*

DAMAGES. See *Action; Common Carrier.*

EJECTMENT

Outstanding Title—Fraud.—A defendant in an action of ejectment, who claims adversely to both the parties to a mortgage, which is due and unsatisfied, cannot avail himself of the mortgage as an outstanding title to defeat the action: *Hardwick* v. *Jones*, 65 Mo.

It is no fraud on the part of the holder of several judgments to sell under a junior judgment, notifying bidders of the lien of those which which are older: *Id.*

A person claiming title to land does not forfeit his right by attempting to buy in a conflicting claim: *Id.*

It is no objection to the plaintiff's title in ejectment that he is not a purchaser for a valuable consideration: *Id.*

EQUITY. See *Bond; Corporation; Executor.*

Relief in case of Fraud—Laches—The power of a court of equity to relieve against a judgment upon the ground of fraud in a proceeding had directly for that purpose is well settled: *Brown et al.* v. *County of Buena Vista*, S. C. U. S., Oct. Term 1877.

The power extends also to cases of accident and mistake. But such relief is never given upon any ground of which the complainant with proper care and diligence could have availed himself in the proceeding at law. In all such cases he must be without fault or negligence. If he be not within this category, the power invoked will refuse to interfere, and will leave the parties where it finds them. Laches, as well as positive fault, is a bar to such relief: *Id.*

Relief in—Mistake—Voluntary Conveyance.—In a suit in equity re-

lief can only be granted in accordance with some one or more allegations in the bill: *Stover* v. *Poole*, 67 Me.

A court of equity will not set aside a voluntary conveyance as between the parties, unless upon the ground of fraud actual or constructive: *Id.*

Nor is a mistake in law sufficient for that purpose, unless it occurs under such circumstances that fraud, imposition or improper influence may be inferred, or to prevent intolerable injustice; and the mistake must appear from the strongest and most satisfactory proof: *Id.*

To obtain relief on the ground of mistake, it must appear in the bill what it is that is relied upon; and the proof must follow the allegation, so that the court may know precisely what is asked and what is the relief sought: *Id.*

Pleading—Parties to the Record.—In the case of a general creditors' suit, or where there is a fund in court and an order requiring creditors to come in to participate in the distribution, the simple fact that a party appears and files his claim, raises the presumption, that he intends to make himself a party to the record: *Thomas* v. *Farmers' Bank of Maryland*, 46 Md.

Where a suit is instituted, not for the benefit of creditors generally, but for the enforcement of some special right, as for the foreclosure of a mortgage or the enforcement of a vendor's lien, and a third person desires to come in and be made a party, he should, by some appropriate allegation, make known the nature and character of his right. In the absence of such allegation or statement of record, the mere fact that a short copy of a judgment in favor of a third person was found filed with other judgments in such an equity cause is not binding and conclusive record evidence that such person became a party thereto. And in such case, parol proof that the copy of the judgment was filed without proper authority is admissible: *Id.*

EXECUTION. See *Attorney.*

EXECUTOR.

Executor and Trustee—Remedy against Sureties for devastavit committed by an Executor.—Although an executor strictly speaking may be considered as a trustee, and as such may be held accountable in a court of equity for a proper administration of the trust, yet it is clear that the sureties maintain no such relation. On the contrary, their obligation being one of contract, the remedy for a breach of it must, as a general rule, be by an action at law on the bond: *Edes* v. *Garey*, 46 Md.

If there be any exception to this general rule, there must be *special and peculiar circumstances*, making the exercise of jurisdiction necessary to the protection of the rights and interests of parties: *Id.*

GOVERNMENT. See *United States.*

HUSBAND AND WIFE.

Necessaries.—The husband is liable for necessaries furnished a wife, who for good and sufficient cause has left his bed and board: *Thorpe* v. *Shapleigh*, 67 Me.

One cannot furnish articles which are not necessaries and recover a fraction of their value because they might have answered the purpose of other articles which would have been necessaries: *Id.*

The articles furnished must be necessaries, suitable and proper, regard being had to the condition of the parties, else no recovery can be had: *Id.*

Tort by Wife—Presumption of Husband's Coercion not conclusive.—

Where an action is against husband and wife for a tort committe by the wife, the liability of the husband necessarily follows from the existence of the marital relation, and when, by the pleadings, this is not disputed, a verdict that the wife is guilty disposes of the whole issue raised by a joint plea of not guilty: *Ferguson* v. *Brooks et ux.*, 67 Me.

The presumption that in case of tort committed by the wife in the presence of the husband the wife acts under coercion, is not conclusive; and when it is repelled, the wife is responsible for wrongs done by her in his company: *Id.*

The ancient doctrine of the common law, that a married woman cannot be a trespasser by prior or subsequent assent, is so far modified by our statutes giving them the power to manage and control their own property that as to all acts done in their name and behalf for the enforcement of their supposed rights in such property, they are responsible, like other parties not under disability, for what they authorize or ratify: *Id.*

Interest.

Special Rate—Continuance of.—When a note is given on time, with interest at the rate of twelve per cent., the holder after maturity receiving interest by operation of law and not under the contract, is entitled to six per cent. only: *Duran* v. *Ayer*, 67 Me.

Judgment. See *Ejectment; Equity.*

Parol Evidence.—Parol evidence is admissible to show that certain matters as to which a judgment is silent, were not adjudicated: *Sweet* v. *Maupin*, 65 Mo.

Scire Facias against Terre-Tenants—Description of the Land.—A scire facias against terre-tenants is, so far as they are concerned, a proceeding strictly *in rem*, and it is essential that the land to be affected by the judgment should be properly described: *Thomas* v. *Farmers' Bank of Maryland*, 46 Md.

Where, in a scire facias against terre-tenants, there is no sufficient description of the lands appearing of record, either by the sheriff's return or in the pleadings, the court cannot resort to the evidence offered to the jury for the purpose of obtaining a description of the lands against which to render the judgment: *Id.*

Limitations, Statute of. See *Partnership.*

Master and Servant. See *Action.*

Municipal Corporation.

Officer—Tort.—A municipal corporation is not liable for the torts of its officers committed under color of their official capacity: *Barbour* v. *Ellsworth*, 67 Me.

National Banks.

Constitutional Law—Change of State Banks to National.—National banks, as federal agencies, are only exempted from state legislation so far as it may impair their efficiency in performing the functions by which they are designed to serve the government of the United States. It is only when a state law incapacitates them from discharging these

duties that it becomes unconstitutional: *Thomas* v. *Farmers' Bank of Maryland*, 46 Md.

Under the Maryland Act of 1865, ch. 144, a state bank becoming a national bank under a new name may still sue in its old name, a scire facias on an old judgment obtained under its first organization. Such a privilege is not in conflict with the Act of Congress: *Id.*

OFFICER. See *Municipal Corporation; United States.*

PARENT AND CHILD.

Liability of Father for Necessaries.—There must be an express promise, or circumstances from which a promise by the father can be inferred, to hold him liable for necessaries furnished his infant child by a third person: *Murphy* v. *Ottenheimer*, 84 Ills.

PARTNERSHIP.

Partnership Accounts—Bills and Notes—Burden of Proof—Inadmissibility of Parol Evidence to contradict and change the legal import of a Negotiable Note in the hands of an Endorsee—Statute of Limitations.—An action at law cannot be maintained by one partner against another involving the state of the partnership accounts. But one partner may sue another at law on a promise to pay a balance which has been ascertained and agreed upon. And *a fortiori* may an action at law be maintained on negotiable promissory notes given by one partner to another for the amount of the balance ascertained upon dissolution. And it would not be competent for the defendant to defeat such action by showing that there had been no final settlement of partnership accounts: *McSherry* v. *Brooks*, 46 Md.

An adjustment of their partnership affairs was made by agreement under seal between S. and McS. as partners, which, by agreement, was made subject to the future possibility of a change in the amount of the assets that might be realized from the debts due the firm. If any collections could be made on account of debts supposed at the time to be bad or doubtful, McS. was to be entitled to a proportionate abatement from the amount of certain promissory notes, which he gave to S. in settlement of his proportion of the indebtedness of the firm as ascertained by said adjustment. While, on the other hand, if, by the exercise of due diligence, less could be realized than was supposed to be good, McS. was to be charged with a proportionate amount of said loss. In an action against McS. by the endorsee after maturity of these notes, *held*, 1. That the *onus* was upon the defendant as to any collections of such bad or doubtful debts as would entitle him to a credit upon the notes; 2. That, notwithstanding the notes were overdue from the time they were made, yet, being made negotiable in form, they were negotiable at the time they were transferred to the plaintiffs; 3. That the endorsees having taken the notes overdue, it would have been competent for the defendant to avail himself of any equities that attached to the notes themselves, or to show a want of consideration, or that they had been transferred to the plaintiffs in trust for the maker; but not to destroy their legal import and operation, by the introduction of parol evidence of an agreement that the notes were not to be negotiated; or

that they were not to be sued on until it should be ascertained whether certain debts could be realized or not: *Id.*

When the notes were nearly out of date, the defendant was called on by the holder of them, and notified that unless something was done suit would be brought upon them. Whereupon the defendant signed the following endorsement upon each of the notes: "Paid Dec. 16th 1872, $5.00 on acct. of this note to revive the same:" *Held,* that if the parol evidence of the agreement relied on by him as a defence, were otherwise admissible, the defendant had effectually precluded himself from the resort to such defence by said endorsement upon the notes: *Id.*

Surviving Partner may assign Note.—The sole survivor of a firm may assign a promissory note payable to the late firm by endorsement, so as to vest the legal title in the assignee, as effectually as if the note had been made payable to him: *Johnson* v. *Berlizheimer*, 84 Ills.

PATENT.

Infringement—Form of Invention.—A mere variation in the form or shape of the instrument cannot be successfully used to evade the monopoly. But where form is of the essence of the invention it is necessarily material, and if the same object can be attained by a machine different in form where that form is inseparable from the successful operation of the instrument, there is no infringement: *Werner* v. *King*, S. C. U. S., Oct. Term 1877.

It is not only necessary to an infringement that the arrangement which infringes should perform the same service or produce the same effect, but it must be done in substantially the same way: *Id.*

RAILROAD.

Baggage of one not a Passenger—A railroad company is not obliged to carry as baggage the trunk of one who does not go by the same train. Upon receiving the trunk of such person to be forwarded it is received as freight, and the duties and liabilities of a common carrier attach, with the right to a reasonable compensation for transportation. *Wilson* v. *Grand Trunk*, 56 Me. 60, and 57 Id. 138, affirmed: *Graffam* v. *Boston & Maine Railroad Co.*, 67 Me.

STATUTE.

Legislative adoption of Construction.—The re-enactment of a statute after a judicial construction of its meaning, is a legislative adoption of the statute as thus construed: *Tuxbury's Appeal*, 67 Me.

SUCCESSION TAX. See *Tax.*

TAX.

U. S. Succession Tax—Lien of—Personal Liability for.—A purchaser of land, upon the descent of which a succession tax is due under the Act of Congress incurs no personal liability to pay it; but takes the title subject to a lien for it: *Wilhelmi* v. *Wade et al.*, 65 Mo.

No one can be made liable for payment of a share of the succession tax due on the descent of a tract of land greater than his share in the land: *Id.*

The Act of Congress does not authorize a sheriff, who has sold land and collected the proceeds under an order of court in a partition suit, to pay the succession tax due upon the descent of the land: *Id.*

TELEGRAPHY.

Non-delivery of Message.—In an action by a father against a telegraph company, for negligence in failing to deliver a telegram sent by him to his son, summoning the son home to the deathbed of his mother, the plaintiff is entitled to recover at least nominal damages, including the price paid the company to send the despatch: *Logan* v. *W. U. Telegraph Co.*, 84 Ills.

TORT. See *Husband and Wife; Municipal Corporation.*

TRIAL.

Absence of Judge during argument of the Cause.—It is error for a judge before whom a case is being tried to leave the court room whilst the cause is being argued before the jury, and be employed in other official duties, leaving an attorney to preside in his place; and it is no less error, that he is in another part of the building than if he were in another county. The argument of a cause is as much a part of the trial as hearing the evidence, and the parties are entitled to have the judge present, and he cannot, even by consent of parties, be elsewhere employed: *Meredith* v. *The People*, 84 Ills.

UNITED STATES.

Act of Congress relating to Officers of.—The Act of Congress of June 2d 1862 entitled, "An Act to prevent and punish fraud on the part of officers intrusted with the making of contracts for the government," requires such contracts to be in writing and is mandatory and not directory merely: *Clark* v. *The United States*, S. C. U. S., Oct. Term 1877.

The government is not responsible for the laches or the wrongful acts of its officers: *Hart et al.* v. *The United States*, S. C. U. S., Oct. Term 1877.

WILL.

Presumption—General Intent—Conversion.—No presumption of an intent to die intestate as to any part of his property is allowable, when the words of a testator's will may fairly carry the whole: *Given et al.* v. *Hilton et al.*, S. C. U. S., Oct. Term 1877.

An apparent general intent to make by his will a complete disposition of all a testator's estate cannot control particular directions plainly to the contrary, or enlarge dispositions beyond their legitimate meaning: *Id.*

Such a general intent is of weight however in determining what was intended by particular devises or bequests that may admit of enlarged or limited constructions: *Id.*

When a will directs conversion of realty only for certain purposes which are limited, for example, for the payment of particular legacies, and follows the direction by a bequest of the residue of personal estate, the conversion takes place only so far as the proceeds of the sale are needed to pay the legacies prior to the residuary one, and the gift of the personalty will not carry the produce of the sale of the lands in the absence of a contrary intent plainly manifested: *Id.*

A general direction to sell and apply the proceeds indiscriminately to the payment of debts and legacies operates as a conversion out and out: *Id.*